

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.718 OF 2005

Anurag Sites

Appellant

Vs.

The Bombay Municipal Corporation
& ors.

Respondents

Ms.Nita Solanki i/by Kiran Jain & Co. for appellant.

Mrs.Geeta Joglekar for respondent no.1.

Mr.Pankaj Thatte for Respondent no.3.

CORAM: B.H.MARLAPALLE,J.
August 03, 2005.

ORAL ORDER:

1. Heard the learned counsel for the appellant -
plaintiff and the learned counsel for the
respondents.

2. L.C. Suit No.8540 of 1988 filed for the
relief of declaration and permanent injunction before
the City Civil Court at Mumbai came to be dismissed
for non-prosecution on 8-2-2002. Notice of Motion
No.641 of 2002 was taken out on or about 12-2-2002
for restoration of the suit and it was rejected. The
said order has been challenged in this appeal.

3. It has been noted by the trial Court that the
suit was filed on 31-10-1988 and was admitted on

3-11-1988. The plaintiff had contended that it alone was entitled to retain the possession of the hoarding at Pushp Gandha Co-op. Hsg.Soc. and that the hoarding permit no.16065 issued by the respondent no.1 subsisted and operated and remained valid at all times. Obviously the suit was not attended to and it was contended that Mr.Sajjanraj Kothari, the partner of the plaintiff had taken ill in 1991 and he failed to take appropriate steps, as a result thereof the suit came to be dismissed for non-prosecution. It is obvious that the Court waited for almost 11 years after the said reported illness. The summons to defendant nos.2, 3 and 4 were not served by the plaintiff till the end of 2001. The summons were issued on 26-6-2001 but for a period of ten months they were not served by the plaintiffs. The suit remained on the file of the trial Court for almost 14 years. Rule 55 of the City Civil Court Rules stipulates effecting of service within 36 days of lodging of the plaint and Rule 219 stipulates time to lodge the writ of summons for service. Both these rules were not complied with by the plaintiff. There was an utter laxity on the part of the plaintiff and, therefore, the trial Court had no alternative but to dismiss the suit for non-prosecution after waiting

for almost 14 years. The reasoning given by the trial Court in the impugned order cannot be said to be perverse or vitiated on any count. The plaintiff has to blame itself for its own wrong doings. There is no case made out to cause interference in the impugned order passed by the trial Court.

4. The appeal is, therefore, dismissed in limine.

(B.H.MARLAPALLE,J.)